

EXHIBIT 3

108:37:49

UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

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MARK C. SCARSI, U.S. DISTRICT JUDGE

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NETLIST, INC.,)

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Plaintiff,)

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vs.)

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8:20-CV-993-MCS

SAMSUNG ELECTRONICS CO.,)

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LTD.,)

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Defendant.)

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REPORTER'S TRANSCRIPT OF JURY TRIAL

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VOLUME III

18

Los Angeles, California

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Thursday, May 16, 2024

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AMY DIAZ, RPR, CRR, FCRR

23

Federal Official Reporter

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108:37:50 THE CLERK: Calling item number one, SACV-20-993,
208:37:56 Netlist, Inc. versus Samsung Electronics.

308:38:00 Counsel state your appearances, please.

408:38:03 MR. SHEASBY: Good morning, Your Honor. For the
508:38:04 plaintiff, Jason Sheasby, Lisa Glasser, Matt Ashley, Michael
608:38:08 Harbour. And we are ready to proceed.

708:38:09 THE COURT: Good morning.

808:38:11 MR. SNYDER: Good morning, Your Honor. Darin Snyder
908:38:14 of O'Melveny & Myers for the defendant Samsung Electronics.
1008:38:15 With me at counsel table is Amy Lucas and Calvin Mendez. And
1108:38:20 our client representative, Mr. Richard An.

1208:38:24 THE COURT: Good morning.

1308:38:24 So just a couple of preliminary things.

1408:38:27 I've got a proposed jury instructions that resolve
1508:38:30 the issue with respect to the damages, and a draft verdict
1608:38:33 form that resolves the issue that we discussed with respect
1708:38:38 to competing interpretations.

1808:38:40 I'll circulate those drafts to you this morning, and
1908:38:44 then maybe we'll talk about them either at our first break or
2008:38:48 certainly at the lunch break. But I wanted to give you a few
2108:38:51 minutes to kind of look through them.

2208:38:53 The jury -- we'll probably know this morning whether
2308:38:57 the jury wants to stay late today or wants to come back
2408:39:01 tomorrow. If they decide to come back tomorrow, my thought
2508:39:03 would be that we would break at the end of testimony today,

108:39:07 resolve any remaining jury instruction issues, and then
208:39:09 tomorrow morning I would provide the jury instructions first,
308:39:14 then let the parties close, and then let the jurors
408:39:18 deliberate.

508:39:19 Either way, I think -- you know, I don't know how
608:39:22 much time you are going to reserve, but we should get them
708:39:25 deliberating if they come back tomorrow by 10:30 or so, I
808:39:28 would think. So they should have plenty of time.

908:39:31 So those are those two issues.

1008:39:33 With respect to the ex partes filed last night,
1108:39:33 they're discovery issues. So I wanted to deal with that, if
1208:39:33 we could.

1308:39:42 One of the issues that Netlist raises is that they
1408:39:45 don't believe that this document was responsive to the
1508:39:48 discovery request as they were, I guess, objected to by
1608:39:53 Netlist. So Netlist understood that it is their discovery
1708:39:58 obligation to exclude internal communications with respect
1808:40:01 to -- with respect to orders.

1908:40:03 So, yeah, so they said in response, they will
2008:40:19 produce nonprivileged purchase order and related
2108:40:22 communications sent by Netlist to Samsung in the relevant
2208:40:24 time period. So they essentially said that they have
2308:40:28 excluded internal communications relating to orders.

2408:40:32 And so they would say that this document wasn't
2508:40:34 responsive to the discovery requests as modified. And I

108:40:38 wanted to get Samsung's position on that.

208:40:40 MR. SHEASBY: Your Honor, I just want to clarify.

308:40:41 We actually did do an internal search as well. We did not

408:40:45 exclude internal communications. The point of saying that

508:40:50 is, we went above and beyond. So there are many, many

608:40:54 internal communications that have been produced. The reason

708:40:56 why this was not produced was because it didn't hit the key

808:40:59 word Samsung or JDLA.

908:41:02 So I want to be very clear, that was a secondary

1008:41:04 argument. So there is no ambiguity, we did not exclude for a

1108:41:09 search for internal communications. There are a massive

1208:41:13 number of internal communications that were produced.

1308:41:15 THE COURT: Okay. But you are making the argument

1408:41:17 that you weren't obligated to produce this document in

1508:41:19 discovery, correct?

1608:41:20 MR. SHEASBY: We agree -- we -- yes. We don't think

1708:41:25 we were obligated to produce it, but it was not a conscious

1808:41:28 decision not to produce it. It was just missed in the pull

1908:41:31 because it didn't hit on the word.

2008:41:35 I think sometimes things get too legalistic on these

2108:41:42 issues. We would have produced the e-mail if we would have

2208:41:45 found it. It's a great e-mail for us. It was missed because

2308:41:48 it didn't hit on the terms. Discovery had closed. That is

2408:41:51 basically it. There was no decision not to produce some

2508:41:56 category of document. There was no partial searching done.

108:42:01 Every single internal/external communication that hit on our
208:42:05 search terms was produced. Every single one. And I just
308:42:09 want to make that emphatically clear.

408:42:11 So for this you can stipulate, we were obligated to
508:42:14 produce it. In other words, that -- in other words, I'm
608:42:17 not -- I don't want to fight about that.

708:42:19 THE COURT: Okay. So Netlist is willing to
808:42:23 stipulate that this was a document that Netlist was obligated
908:42:26 to produce?

1008:42:27 MR. SHEASBY: My point is, I don't want it -- I
1108:42:30 don't think we were, but I don't want it to be a fight about
1208:42:31 that, because that would turn it into sort of -- a sort of a
1308:42:36 procedural fight as opposed to a simple fact that the
1408:42:40 document was found on April 19th, discovery had closed, we
1508:42:44 didn't think it was responsive to anything that was -- was --
1608:42:49 we thought there was -- it was over. There was -- it was
1708:42:52 over. The document only helps us, it doesn't help them. And
1808:42:56 so it just -- the decision was made to only use it if it came
1908:43:01 up to rehabilitate the witness.

2008:43:04 The point I'm trying to make is I don't want this to
2108:43:07 be about a discovery compliance issue, because if it would
2208:43:13 have hit, it would have been produced. There were thousands
2308:43:15 of internal e-mails -- internal communications that were
2408:43:18 produced. That is my only point I'm trying to make.

2508:43:21 THE COURT: Right but I think from the Court's

108:43:23 standpoint, I think it matters whether it was responsive to a
208:43:26 discovery request and not produced or not.

308:43:28 MR. SHEASBY: The answer is I don't think it was
408:43:29 responsive.

508:43:30 THE COURT: Okay. Thank you.

608:43:31 Okay. Let me hear from Samsung on that.

708:43:34 MR. FEINSTEIN: Good morning, Your Honor.

808:43:37 THE COURT: Good morning.

908:43:37 MR. FEINSTEIN: So we do think it was responsive to
1008:43:41 this -- to the request, and in particular to their agreement
1108:43:45 to produce.

1208:43:46 So what they agreed to produce were purchase orders
1308:43:49 and related communications sent by Netlist to Samsung. So
1408:43:54 related communications sent by Netlist to Samsung.

1508:43:58 Now, the document that we are talking about is an
1608:44:01 e-mail chain. It's not just a single e-mail. It's an e-mail
1708:44:06 chain. That is the document.

1808:44:07 And if you -- if you look, the document -- the first
1908:44:16 e-mail in the chain is a communication sent by Netlist to
2008:44:21 Raymond Jiang to Samsung's Neal Knuth. So that is a
2108:44:25 communication by Netlist to Samsung.

2208:44:27 And that e-mail, if you look at the body of it, it's
2308:44:32 a -- has an agenda. And one of items on the agenda is
2408:44:37 backlog review. Right? A backlog is a -- is purchase orders
2508:44:43 that have not yet been fulfilled. Okay? But the word -- so

108:44:47 that is -- that is actually responsive.

208:44:49 But even if they were not searching for the word
308:44:52 "backlog," which they should have searched for, they most
408:44:55 certainly should have searched for Neal Knuth's name, and PO.

508:45:00 So if you look at this document as a whole -- and
608:45:03 again, it's -- the e-mail chain is a document, the whole
708:45:06 chain is a document. They are focusing on just the top and
808:45:09 saying that is not responsive. But the document is
908:45:13 responsive, because the first e-mail in it is a communication
1008:45:18 from Netlist to Samsung regarding a purchase order. And in
1108:45:24 any event, the -- and the search terms, by the way, that they
1208:45:27 used -- so it is responsive, I'm going to stop there. I
1308:45:30 think it is responsive.

1408:45:31 There is other issues that are raised about the
1508:45:34 diligence of their search, which I'm happy to address.

1608:45:38 THE COURT: Well, let me -- can we just -- let me
1708:45:40 look at this e-mail for a second.

1808:45:42 So the e-mail in the sort of the top part, it's got
1908:45:49 three -- three items. Item 2 has some, I guess, for lack of
2008:45:58 a better word, part numbers. PM863A and SM863A.

2108:46:07 Do you know. What do those stand for, PM and SM?

2208:46:11 MR. SHEASBY: So, I do, Your Honor. Those are the
2308:46:15 PLEXIS part numbers. The long e-mail chain about PLEXIS,
2408:46:21 internal e-mail communications about PLEXIS, all of that was
2508:46:24 produced. This is just the follow-up internal e-mail for

108:46:28 whatever reason didn't get captured. So it's talking about
208:46:30 the part numbers that were the subject of that long e-mail
308:46:34 chain that Samsung was examining on yesterday.

408:46:37 THE COURT: Okay. And so the PM863A and the SM863A
508:46:41 are parts for PLEXIS?

608:46:44 MR. SHEASBY: Yes.

708:46:45 MR. FEINSTEIN: I don't know if they are parts for
808:46:46 PLEXIS, they are part numbers.

908:46:48 THE COURT: And so, yeah -- so I guess, I mean, the
1008:46:51 issue we've got is that the -- we've got some documents
1108:46:55 produced, then I guess and some documents not produced. It
1208:46:59 would seem like if this -- if this came up in production --

1308:47:03 Well, and let me ask Samsung, the sanctions that you
1408:47:09 are looking for -- so the Court's already excluded this
1508:47:12 document from evidence, because it wasn't -- it wasn't
1608:47:16 produced. And so I think that -- that ruling I think is --
1708:47:21 was appropriate. And the Court is not going to disturb that
1808:47:24 ruling.

1908:47:24 But in addition, let me hear from Samsung as to why
2008:47:29 you think that this -- that this failure to produce this
2108:47:35 document should result in the testimony of identified being
2208:47:40 stricken.

2308:47:40 MR. FEINSTEIN: So not only did they not produce the
2408:47:46 document years ago when they should have produced it, but
2508:47:49 more to the point, to the question that you are asking, what

108:47:52 did they do when they discovered the document? Right?

208:47:59 One thing we do know is that they did not supplement
308:48:02 their disclosures. Right? They did not tell us, and that
408:48:05 was a violation of their obligations under Rule 26 to
508:48:08 supplement. Right? If there was something, a correction or
608:48:12 incompleteness in their prior production, they should have
708:48:15 disclosed it.

808:48:16 At a minimum -- at a minimum, they should not have
908:48:21 tried to use it in the proceeding, in the trial, and what was
1008:48:28 essentially an ambush. Right? Because they -- they knew --
1108:48:33 they could have told -- they could tell that we were going to
1208:48:35 use that -- you know, that e-mail about SLY and the end
1308:48:41 customer not being -- being made up. Right? Because we put
1408:48:44 it on our exhibit list. We didn't hide it. We put it on our
1508:48:48 exhibit list. I'm sure they searched for Devon Park's name,
1608:48:51 they found that e-mail, they knew that was coming.

1708:48:54 So what did they do -- and they admitted in their
1808:48:56 declaration, they did their own search -- they asked him
1908:48:59 about it, they did a search of his files and they turned up
2008:49:02 this document.

2108:49:03 And issue number one, they didn't disclose it to us
2208:49:08 at that time, even though they -- we would assert, Your
2308:49:11 Honor, it was responsive.

2408:49:12 And issue number two, they marked it as though it
2508:49:19 was a trial exhibit. And then just with a -- and then just,

108:49:24 you know, tried to use it with the witness without disclosing
208:49:28 to us that it's not actually a trial exhibit, it was never
308:49:32 disclosed to us previously. But they tried to pass it off as
408:49:37 though it was a trial exhibit.

508:49:39 And they also didn't disclose to us, which they
608:49:44 should have, that it was never produced.

708:49:46 Even if -- I would submit to Your Honor that this
808:49:49 document is -- definitely falls within that document request.
908:49:53 Okay? But even if there was some doubt about it, they should
1008:49:58 have construed that in our favor, and made sure that we were
1108:50:01 aware of it. Made sure that we were aware of that document.

1208:50:06 If we were aware of that document, then -- you know,
1308:50:08 I was the one responsible for conducting the examination of
1408:50:11 Mr. Park. If I was aware of that document, there are a few
1508:50:15 things that we would have done. We would have spoken to
1608:50:18 Mr. Knuth. Right? We would have asked him, a former Samsung
1708:50:22 employee, we would have asked him about it. And we would
1808:50:25 have considered how to conduct the examination, whether to do
1908:50:28 it the same way or to do it different. We would have had to
2008:50:30 decide what to do.

2108:50:31 We have not, by the way, spoken to him about it
2208:50:34 because he's sequestered. Right? And so the situation that
2308:50:37 they created by not making that document available to us is
2408:50:41 that they had this evidence in their back pocket, so to
2508:50:44 speak. They allowed us to blindly go forward with our

108:50:48 examination, and prepared to ambush us.

208:50:53 And so if -- you know, so here are the sanctions
308:50:56 that we think were appropriate.

408:50:58 One, any -- any testimony by Mr. Park where he
508:51:06 either blurted out on his own or in response -- you know, in
608:51:10 response to my questions, anything that is, you know, along
708:51:17 the lines of him saying, Mr. Knuth told us to make up this
808:51:20 story, we would say that should be stricken. That should be
908:51:23 stricken.

1008:51:24 They shouldn't be able to ask Mr. Knuth about it.
1108:51:30 Right? They shouldn't be asked -- they shouldn't be able to
1208:51:33 develop that counter case, right, that Mr. Knuth made up this
1308:51:37 story.

1408:51:37 By the way, we don't think he made up a story. We
1508:51:40 think he told him, you need to find some facts so I can sell
1608:51:44 this to my management.

1708:51:45 But in any event, they shouldn't be able to present
1808:51:48 that evidence, any evidence to the effect that Mr. Knuth told
1908:51:51 him to make up a story to contradict the line of questioning
2008:51:55 that we did. And it should be -- they shouldn't be able to
2108:51:59 do that. The testimony should be stricken, and we've
2208:52:02 identified it in our papers, and the jury should be
2308:52:05 instructed to disregard it.

2408:52:06 That is how we think that piece should be handled.

2508:52:09 But we also think, Your Honor, that there is a

108:52:12 serious question, if you want me to address it now, about
208:52:16 their document production. I mean, you asked them to explain
308:52:23 how it is they didn't produce this. And you know, now they
408:52:26 are arguing about, you know, kind of going -- waffling, but
508:52:31 arguing that it wasn't actually responsive.

608:52:32 But one of the things that they have revealed is the
708:52:35 way Netlist counsel conducted its document collection. What
808:52:41 they are telling us is that they did a diligent document
908:52:45 collection, but the explanation that they give for this
1008:52:48 diligent document collection is that they simply searched for
1108:52:51 the word Samsung. Right? Samsung. Or Samsung.com.

1208:52:56 I mean, if you think about this case, that is not a
1308:52:59 diligent search. They should be searching for Neal Knuth,
1408:53:05 Steven Metz. We have a whole list of people in Korea,
1508:53:08 Harrison Yoo. I mean, there are just loads of communications
1608:53:11 with these people.

1708:53:12 I mean, you may or may not have the word -- I mean,
1808:53:16 but you can see from this e-mail, by the way -- and anybody
1908:53:19 who has done any kind of document collection will know that
2008:53:22 in the intermediate e-mails, you don't necessarily have the
2108:53:26 e-mail address, like if you look at the bottom e-mail, it
2208:53:30 says Neal Knuth, it doesn't say Samsung, even though his
2308:53:34 actual e-mail address would be Samsung.com.

2408:53:38 You need to search for the names. And not to search
2508:53:40 for a name like Neal Knuth, I mean, it's just not diligent.

108:53:44 We all get together, you know, in our firms when somebody
208:53:47 sends us a document request, we go through the search terms.
308:53:51 I can't imagine how somebody wouldn't come up with a search
408:53:54 term Neal Knuth, Steven Metz, or the search term purchase
508:53:59 order or PO. And if they used those search terms, it would
608:54:03 have pulled up this document, without a question.

708:54:07 The document, again, is the whole thing. It's both
808:54:09 e-mails. To not have searched for PO and Neal Knuth is
908:54:15 simply inexcusable.

1008:54:18 And at this point, in this trial, it just raises a
1108:54:21 serious question, what else is out there that they didn't
1208:54:24 produce?

1308:54:24 And by the way, counsel says, oh, we would have
1408:54:27 produced this document, it's actually a good document for
1508:54:29 them. I don't know how good it is. If you look under item
1608:54:35 number 2, it says, referring to Mr. Knuth, he will get us --
1708:54:39 this is the third line down under 2. It starts out with, he
1808:54:43 will get us. And it says, he will get us as many
1908:54:47 allocation -- as many as allocation he can. But
2008:54:52 remaindered -- reminded us to have credit available.

2108:54:54 Doesn't sound like something that is so good for
2208:54:56 them, that they want to get us all the allocation, but the
2308:55:01 problem is credit, okay? That is not such a good fact for
2408:55:04 them, for this to be the explanation for why they are not --
2508:55:08 Samsung is not providing product.

108:55:09 So anyway, I think there is a serious issue about
208:55:12 their document production. And here we are in the middle of
308:55:14 trial, and I don't know how to address it, other than through
408:55:16 some kind of -- we suggested an adverse inference, certainly
508:55:21 within the Court's discretion. We think something -- I mean,
608:55:23 it's just unfair from our standpoint to hear at this point
708:55:27 that we don't know what kind of documents were never
808:55:30 produced.

908:55:30 THE COURT: Thank you.

1008:55:31 Okay. Let me go back to Netlist.

1108:55:32 And so the concern I've got in response to Samsung's
1208:55:35 argument is that it kind of seems like you allowed them to
1308:55:39 kind of walk into a trap, right? Because you kind of allowed
1408:55:42 them to raise this issue thinking you had this backstop,
1508:55:44 which was this document that would -- that would imply that
1608:55:49 Neal Knuth told them to make up a customer.

1708:55:52 And it seems like that, you know, had they known
1808:55:57 about this document, had they known that this existed, they
1908:56:02 may not have walked into that trap. And so I'm wondering
2008:56:04 about why the Court shouldn't strike all this testimony from
2108:56:08 Mr. Park with respect to what Mr. Knuth told him.

2208:56:12 MR. SHEASBY: I think you can do that.

2308:56:14 THE COURT: So that is that issue.

2408:56:17 Now, the other issue is the issue of the request
2508:56:27 from Samsung that there is some statement to the jury. And I

108:56:29 guess I haven't heard from Samsung on this -- the
208:56:34 justification for this request.

308:56:35 So why don't I just do that first. Let me hear from
408:56:37 Samsung.

508:56:38 So you want us to tell the jury that Netlist failed
608:56:43 to turn over documents. And what I'm wondering about is, I
708:56:47 mean, it seems like it's a fairly severe thing to do.

808:56:53 "Severe" is maybe the wrong word. It's a fairly -- it's a
908:57:00 consequential thing to say to the jury.

1008:57:02 What is the justification for that?

1108:57:04 MR. FEINSTEIN: The justification is that you asked
1208:57:08 them to explain the diligence related to the -- to explain
1308:57:12 why they did not produce this document.

1408:57:16 I take it that was a -- that was a serious request,
1508:57:19 right, for them to explain why they didn't produce this
1608:57:21 document.

1708:57:22 Their explanation is scant. Right? I mean, they
1808:57:28 didn't identify -- I mean, they didn't identify custodians,
1908:57:34 they didn't identify search terms, other than that one search
2008:57:37 term. And what is revealed by their declaration is that
2108:57:42 their diligence was inadequate. It was inadequate.

2208:57:47 They shouldn't have just used a search term
2308:57:51 "Samsung," for the reasons I said before. Any -- I mean, I
2408:57:57 don't think by any stretch of the imagination is using the
2508:58:00 word "Samsung" alone a reasonable search term. That alone,

108:58:06 it cannot be a reasonable search term in a case like this.

208:58:09 They should have been using Knuth or Metz or Harrison Yoo or

308:58:15 purchase order, you know, and combining with those terms. It

408:58:17 was simply unreasonable.

508:58:18 So how do you deal with that situation now that we

608:58:20 are all the way at the -- you know, into the trial. I don't

708:58:26 think they get a pass, right? I don't think they get a pass

808:58:30 for it. I -- they haven't, you know, they didn't provide an

908:58:38 answer to you that I think shows that -- whether it was

1008:58:42 willful or not, we can't say, okay, on this record whether it

1108:58:47 was willful. But certainly it was grossly negligent,

1208:58:52 certainly grossly negligent to do it the way they did it.

1308:58:56 Okay? And that is not just negligence, grossly negligent.

1408:59:01 Anybody in any law firm would know you don't just search for

1508:59:04 the word "Samsung."

1608:59:05 So what do you do about that? It's serious

1708:59:08 misconduct, I think. So the jury has to be -- so I just

1808:59:20 think, you know, the jury -- I think it's a concern of the

1908:59:24 Court that it's a heavy sanction.

2008:59:25 THE COURT: Right. And that is the Court's concern.

2108:59:28 I mean, I don't want to, you know, the -- a failure to

2208:59:35 produce document, telling the jury -- in your request, you

2308:59:41 say the jury should be instructed that Netlist failed to turn

2408:59:43 over to Samsung all of the documents Netlist was required to

2508:59:46 turn over to Samsung, and that the jury may infer that

108:59:49 Netlist has improperly withheld documents that are harmful to
208:59:58 its case.

308:59:58 That seems like it's telling the jury that Netlist
409:00:01 acted improperly, trying to hide something. And I'm
509:00:04 wondering about whether that is too severe of a sanction that
609:00:06 could -- that could reasonably lead the jury to decide that
709:00:10 Netlist is a bad actor, and they should rule in favor of
809:00:14 Samsung.

909:00:15 MR. FEINSTEIN: Could be something along the lines
1009:00:17 of their -- they were asked -- they were required to produce
1109:00:22 documents in discovery, there were inadequacies in the manner
1209:00:26 in which they turned over documents, and there may be
1309:00:29 documents that they failed to turn over that are damaging,
1409:00:32 that are harmful to them. That is all.

1509:00:34 So it's not so much putting the finger on them, but
1609:00:36 it is fair to suggest that there may be documents that have
1709:00:40 never been disclosed to us that could be harmful to them,
1809:00:44 without saying that they did it deliberately.

1909:00:46 THE COURT: Okay. Let me turn to Netlist.

2009:00:49 Excuse me one second.

2109:00:54 So let me turn back to Netlist for a second. And
2209:01:01 let me get a response to Samsung's request for that jury
2309:01:06 instruction.

2409:01:07 MR. SHEASBY: Your Honor, I think that is an extreme
2509:01:09 sanction. I think an evidentiary hearing would need to be

109:01:13 held for that type of sanction. And it is based on an
209:01:16 incorrect allegation.

309:01:18 The search term was not only "Samsung." What
409:01:21 happened was there was a massive pull of documents. For
509:01:25 whatever reason, this single document did not get into that
609:01:28 massive pull. There were hundreds of thousands of documents
709:01:31 that were pulled from our databases. We don't know how this
809:01:35 document didn't get pulled. We don't know why it didn't get
909:01:38 pulled. We have only had 24 hours to sort of investigate
109:01:41 this.

1109:01:43 This is -- there is no evidence that there was a
1209:01:46 systematic problem with this pull. Randomized documents that
1309:01:51 have Neal Knuth in the second page, if you saw the first page
1409:01:55 and you didn't see the second page, you wouldn't necessarily
1509:01:58 know what this was talking about. We did not exclude -- we
1609:02:00 did not search just based on "Samsung."

1709:02:02 I was not did the production, but we did speak to
1809:02:06 the firm that did it previously, we have every reason to
1909:02:09 believe there was good faith.

2009:02:10 We think post-trial, if the Court wants to have a
2109:02:13 hearing to determine the quality of our search, the Court
2209:02:16 should do so. But to give that level of instruction without
2309:02:19 an evidentiary hearing, I think is beyond. Because if it
2409:02:23 turns out that that is incorrect, that we did do a good faith
2509:02:27 search, we may have to redo the trial.

109:02:31 THE COURT: And then my last question -- and the
209:02:33 jury is here, so I want to get started with them. But this
309:02:36 document is labeled IX0013. How many IX documents are there?

409:02:43 MR. SHEASBY: All the other IX documents are just
509:02:46 printed publications that we would use in impeachment.

609:02:49 THE COURT: Okay. So all -- so this is the only IX
709:02:53 document, then, that is not a printed publication?

809:02:58 MR. SHEASBY: Yes. These were just stuff we would
909:03:00 use in impeachment. That is all it was.

1009:03:02 THE COURT: And so the representation is, then, this
1109:03:05 is the only one that is a -- is a -- when you say the other
1209:03:12 ones are all publications, the other ones are publically
1309:03:15 available?

1409:03:16 MR. SHEASBY: They are like newspaper articles about
1509:03:18 Samsung having a large amount of documents. Samsung making a
1609:03:22 lot of money. Or a JEDEC press release.

1709:03:26 THE COURT: Okay. Let me think about this a bit.

1809:03:29 Do we need to make a decision before we start
1909:03:31 testimony? So can we avoid this issue in Mr. Knuth's
2009:03:38 examination?

2109:03:39 MR. SHEASBY: Yes, we can, Your Honor.

2209:03:40 THE COURT: Okay. Then let me think about this a
2309:03:43 bit, and I'll make a decision at the next break.

2409:03:47 MR. SNYDER: Excuse me, Your Honor. I'm not sure
2509:03:48 that we can avoid this with Mr. Knuth, because the jury has

109:03:52 heard the testimony, and we need -- when Mr. Knuth is on the
209:03:55 stand, unless the testimony is going to be stricken and
309:03:58 something said to the jury about why that testimony is going
409:04:01 to be stricken, we need to ask Mr. Knuth about this
509:04:05 situation. That is our only opportunity to do it. And he's
609:04:08 currently on the stand.

709:04:09 THE COURT: Okay. So I think the Court will rule
809:04:13 that the testimony relating to what Mr. Knuth said to
909:04:17 Mr. Park should be stricken. And I think Netlist counsel has
1009:04:22 indicated in agreement with that way to move forward.

1109:04:26 So I'll tell that to the jury before we start with
1209:04:31 Mr. Knuth's testimony. The Court will say -- let me just
1309:04:36 throw this out here -- that there was some testimony
1409:04:38 yesterday from Mr. Park with respect to what Mr. Knuth may
1509:04:41 have told him regarding identifying customers. The jury is
1609:04:46 to disregard that testimony.

1709:04:52 MR. FEINSTEIN: That's fine, Your Honor.

1809:04:55 MR. SHEASBY: No objection, Your Honor.

1909:04:56 MR. FEINSTEIN: No objection, Your Honor. And there
2009:04:58 will be no questioning of Mr. Knuth about it either.

2109:05:00 THE COURT: Right. Exactly. Okay. Great.

2209:05:01 Let's get the jury in.

2309:05:03 Thank you.

2409:06:51 (Thereupon, the jury returned to the courtroom.)

2509:07:27 THE COURT: Welcome back to the jurors. Please have

116:00:50 instructions, so you should be able to work on your closings
216:00:52 without any questions.

316:00:54 And then we'll get together at 8:30 tomorrow and
416:00:57 we'll finalize these four instructions.

516:01:00 MR. SHEASBY: Your Honor, just for planning
616:01:01 purposes, there is the ex parte that was filed this morning
716:01:04 about whether they were going to ask for some type of
816:01:08 sanction against us.

916:01:09 THE COURT: Oh, I'm sorry, yeah. Thank you for
1016:01:11 that.

1116:01:11 I think we instructed the jury with respect to just
1216:01:15 disregard the testimony. And the question is, think about
1316:01:22 whether we need to give them that same instruction again or
1416:01:25 whether it's done and over with and they don't have to worry
1516:01:28 about it.

1616:01:28 With respect to whether we need to sanction Netlist
1716:01:31 further, I will -- I think the appropriate course is the one
1816:01:37 that Mr. Sheasby indicated earlier, is that if Samsung wants
1916:01:41 to bring a motion for an evidentiary hearing on this
2016:01:44 discovery issue, we can do that at some point after the
2116:01:47 trial, and deal with that.

2216:01:50 Then depending on that, we could issue a sanction
2316:01:53 that would require some, you know, vacating of the --
2416:01:57 whatever happened at trial.

2516:01:59 But for now, we'll leave that to post-evidentiary

116:02:03 hearing.

216:02:04 That was your suggestion, right?

316:02:05 MR. SHEASBY: It was, Your Honor.

416:02:06 THE COURT: I think that makes good sense.

516:02:07 MR. SHEASBY: And the other issue is that the --

616:02:11 there was -- and I don't think it was accidental, there was

716:02:14 repeated injection of post --

816:02:16 THE COURT: Yes. Post -- so will you remind me, we

916:02:21 should instruct the jury that any conduct after such and such

1016:02:25 a date is not to be considered in their deliberations.

1116:02:30 MR. SHEASBY: And under New York law, the problem

1216:02:33 is, what that date is, is in dispute. What we assuredly know

1316:02:38 is -- we'll try to work on a date.

1416:02:40 THE COURT: We've said the close of discovery,

1516:02:45 amongst us.

1616:02:47 MR. SHEASBY: The problem is, Your Honor, there are

1716:02:48 two close of discovery dates. The magistrate judge limited

1816:02:53 Samsung's production on sales information to a date earlier

1916:02:57 than the formal close of fact discovery date. And that is

2016:03:00 why I was trying to articulate, I don't know which one they

2116:03:03 are talking about.

2216:03:03 THE COURT: Okay. Well, you guys work on that.

2316:03:05 I've got in my notes August 16, 2021.

2416:03:12 MR. FEINSTEIN: Sounds right, Your Honor. We'll

2516:03:13 confirm that.